

CITY OF KIRKLAND, WASHINGTON

ORDINANCE NO. 2869

AN ORDINANCE of the City of Kirkland, Washington, relating to the water supply and distribution system of the City; providing for the issuance of \$1,235,000 principal amount of Water and Sewer Revenue Refunding Bonds, 1985, of the City for the purpose of providing the funds to refund, pay and retire the outstanding Water and Sewer Revenue Refunding Bonds, 1978; fixing the date, form, terms, interest rates, maturities and covenants of such bonds; providing for and authorizing the purchase of certain obligations out of the proceeds of the sale of such bonds and for the use and application of the money to be derived from such investments; authorizing the execution of an agreement with Seattle-First National Bank of Seattle, Washington, as Refunding Trustee; providing for the payment and redemption of the outstanding bonds to be refunded; creating a special bond redemption fund; and approving the sale and providing for the delivery of such bonds to Boettcher & Company of Seattle, Washington.

WHEREAS, the City of Kirkland, Washington (the "City"), by Ordinance No. 576 heretofore combined its municipal water system and system of sewerage, including all additions thereto and betterments and extensions thereof at any time made, pursuant to RCW 35.67.320, and such combined systems, including the separate waterworks system and separate system of sewerage of the former City of Houghton, Washington, which has now been consolidated with the City, if the same hereafter shall be combined with and made a part of the waterworks utility of the City, shall hereinafter be referred to as the Waterworks Utility; and

WHEREAS, pursuant to Ordinance No. 2403, the City heretofore issued its \$1,818,000 par value of Water and Sewer Revenue

Refunding Bonds, 1978 (the "1978 Bonds") for the purpose of obtaining part of the funds with which to accomplish the refunding, payment and retirement of the outstanding Water and Sewer Revenue Bonds, 1955, Water and Sewer Revenue Bonds, 1960, Sewer Revenue Bonds, 1967 of the City of Houghton, Washington, Water and Sewer Revenue Refunding Bonds, 1972, and Water and Sewer Revenue Bonds, 1974; and

WHEREAS, the City presently has outstanding \$1,440,000 principal amount of the 1978 Bonds, maturing on June 1 of each of the years 1985 through 1997, and bearing various interest rates from 6.25% to 6.90%; and

WHEREAS, the City Council finds that it is in the City's best interest to advance refund the 1978 Bonds by providing for paying the principal of and interest on such bonds as they become due to their maturity, all for the purpose of effecting a significant savings by the difference between the principal and interest cost over the life of the refunding bonds authorized herein and the principal and interest cost over the life of the 1978 Bonds but for such refunding, which refunding will be effected by:

- (a) The issuance of the refunding bonds; and
- (b) The payment of the principal of and interest on the 1978 Bonds as the same shall become due up to and including June 1, 1997;

and

WHEREAS, in order to effect such refunding in the manner that will be most advantageous to the City it is found necessary

and advisable that certain Acquired Obligations (hereinafter defined) bearing interest and maturing at such time or times as necessary to accomplish the refunding as aforesaid be purchased out a portion of the proceeds of the bonds authorized herein and, as may be necessary or desirable, other money that the City legally has available therefor; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KIRKLAND, WASHINGTON, DO
ORDAIN AS FOLLOWS:

Section 1. As used in this ordinance the following words shall have the following meanings:

(a) "Acquired Obligations" shall mean those Government Obligations purchased to accomplish the refunding authorized by this ordinance.

(b) "Annual Debt Service" shall mean, in any year, that year's total of principal and interest requirements for the then outstanding bonds (except the principal maturity of Term Bonds) to which the term "Annual Debt Service" refers, plus any mandatory sinking fund or mandatory bond redemption requirement for that year, less all capitalized interest payable that year from such bonds.

(c) "Average Annual Debt Service" shall mean, in any year, the sum of the remaining Annual Debt Service of the then outstanding bonds to which the term "Average Annual Debt Service" refers divided by the number of years such bonds are scheduled to remain outstanding.

(d) "Bond Fund" shall mean the "Water and Sewer Revenue Refunding Bond Fund, 1985," created by Section 3 of this ordinance for the purpose of paying and securing the principal of and interest on the Bonds and any Parity Bonds.

(e) "1978 Bond Fund" shall mean the Kirkland Water and Sewer Revenue Refunding Bond Fund, 1978, created by Ordinance No. 2403, as amended, to secure the payment of the 1978 Bonds and any bonds issued on a parity therewith.

(f) "Bonds" shall mean the \$1,235,000 par value of Water and Sewer Revenue Refunding Bonds, 1985, authorized to be issued by this ordinance.

(g) "1978 Bonds" shall mean the outstanding Water and Sewer Revenue Refunding Bonds, 1978, of the City issued under date of August 1, 1978, pursuant to Ordinance No. 2403, as amended, of which \$1,440,000 principal amount is outstanding.

(h) "Bond Registrar" shall mean the fiscal agencies of the State of Washington in Seattle, Washington, and New York, New York, as the same may be designated from time to time.

(i) "City" shall mean the City of Kirkland, Washington, a noncharter code city of the State of Washington.

(j) "Government Obligations" shall mean those government obligations defined by RCW 39.53.010 as it now reads or hereafter may be amended and which are otherwise lawful investments of the City at the time of such investment.

(k) "Maximum Annual Debt Service" shall mean the maximum amount of Annual Debt Service which shall become due in any future year on any outstanding Bonds and Parity Bonds.

(l) "Operating and Maintenance Expense" shall mean all reasonable expenses incurred by the City in causing the Waterworks Utility to be operated and maintained in good repair, working order and condition and all payments made to another agency for treatment or disposal of sewage or acquisition of water, but excluding depreciation and any City-imposed utility taxes or payments in lieu of taxes.

(m) "Parity Bonds" shall mean any and all revenue bonds of the City issued after the date of the issuance of the Bonds pursuant to the provisions of Section 12 of this ordinance, the payment of the principal of and interest on which constitutes a lien and charge upon the Revenue of the Waterworks Utility and ULID Assessments on a parity with the lien and charge upon such Revenue and ULID Assessments for the Bonds.

(n) "Principal and Interest Account" shall mean the account of that name created in the Bond Fund by Section 3 of this ordinance for the payment of the principal of and interest on the Bonds and any Parity Bonds.

(o) "Refunding Trust Agreement" shall mean a Refunding Trust Agreement between the City and the Refunding Trustee substantially identical to that which is attached as Exhibit A to this ordinance.

(p) "Refunding Trustee" shall mean Seattle-First National Bank of Seattle, Washington, or any successor trustee.

(q) "Reserve Account" shall mean the account of that name created in the Bond Fund by Section 3 of this ordinance for the purpose of securing the payment of the principal of and interest on the Bonds and any Parity Bonds.

(r) "Reserve Requirement" shall mean the amount equal to the Average Annual Debt Service of all bonds payable from the Bond Fund.

(s) "Revenue of the Waterworks Utility" shall mean all the earnings and revenue received by the Waterworks Utility from any source whatsoever, except assessments in any ULID of the City, general ad valorem taxes, grants from the state or federal governments, proceeds from the sale of City property and bond proceeds.

(t) "Sinking Fund Installments" or "Sinking Fund Installment" shall mean, in any one year, the principal of Bonds or Future Parity Bonds designated in the ordinances authorizing their respective issuance and sale as Sinking Fund Installments for that year.

(u) "Term Bond Maturity Year" shall mean any calendar year in which the bonds of any one issue or series now or hereafter scheduled to mature (regardless of any reservation of prior redemption rights) is more than 1.25 times the average annual principal maturity of the bonds of such issue or series for the three maturity years immediately preceding such year.

(v) "Term Bonds" shall mean those outstanding bonds of any single issue or series scheduled to mature in any Term Bond Maturity Year.

(w) "ULID" shall mean utility local improvement district.

(x) "ULID Assessments" shall mean all ULID assessments and installments thereof, plus interest and penalties thereon, heretofore payable into the 1978 Bond Fund and those levied in any ULID created to secure the payment of any Parity Bonds and pledged to be paid into the Bond Fund.

(y) "Waterworks Utility" shall mean the combined water supply and distribution system and sanitary sewage disposal system of the City, together with all additions thereto and betterments and extensions thereof heretofore or hereafter made.

Section 2. For the purpose of providing a part of the money required to pay the principal of and interest on the 1978 Bonds as the same shall become due until their maturity, the City shall issue the Bonds in the aggregate principal amount of \$1,235,000. The Bonds shall be dated May 15, 1985; shall be in the denomination of \$5,000 each or any integral multiple thereof within a single maturity; shall be numbered separately in the manner and with any additional designation as the Bond Registrar deems necessary for purpose of identification; shall bear interest at the rates set forth below, payable on June 1, 1985, and semiannually thereafter on each succeeding December 1 and June 1; and shall bear interest and mature on June 1 in years and amounts as follows:

<u>Maturity Years</u>	<u>Amounts</u>	<u>Interest Rates</u>
1986	140,000	5.75%
1987	160,000	6.50
1988	190,000	7.00
1989	190,000	7.50
1990	200,000	8.00
1991	210,000	8.25
1992	145,000	8.35

If any Bond is not redeemed upon proper presentment at its maturity date, the City shall be obligated to pay interest at the same rate for each such Bond from and after its maturity date until such Bond, both principal and interest, is paid in full or until sufficient money for such payment in full is on deposit in the Bond Fund and such Bond has been called for payment by sending notice of such redemption not less than 30 nor more than 60 days prior to the date fixed for redemption by first-class mail to the registered owner of any Bond to be redeemed at the address appearing on the books and records maintained by the Bond Registrar (the "Bond Register").

Upon surrender thereof to the Bond Registrar, the Bonds may be exchanged for Bonds in any authorized denomination of an equal aggregate principal amount and of the same interest rate and maturity. Bonds may be transferred only if endorsed in the manner provided thereon and surrendered to the Bond Registrar. Such exchange or transfer shall be without cost to the owner or transferee.

The Bonds shall be issued only in registered form as to both principal and interest and recorded in the Bond Register.

The Bond Register shall contain the name and mailing address of the owner of each Bond or nominee of such owner and the principal amount and number of Bonds held by each owner or nominee.

Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Interest on the Bonds shall be paid by check or draft mailed to the registered owners at the addresses appearing on the Bond Register on the fifteenth day of the month preceding the interest payment date or, when requested in writing by a registered owner and approved by the City Director of Administration and Finance, shall be paid on the interest payment date by wire transfer to the account identified by the requesting registered owner whose name, address and wire transfer account number appear on the Bond Register fifteen days preceding the interest payment date. Principal of the Bonds shall be payable upon presentation and surrender of the Bonds by the registered owners at either office of the Bond Registrar in Seattle, Washington, and New York, New York, at the option of such owners. The Bonds shall be payable solely out of the Bond Fund and shall not be general obligations of the City.

The Bonds shall be issued without the right or option of the City to redeem the same prior to their maturity dates.

The City reserves the right to purchase any or all of the Bonds in the open market at a price not in excess of par plus accrued interest to date of such purchase.

Section 3. The Bond Fund is created in the office of the City Finance Director as a special fund of the City to be known as the Water and Sewer Revenue Refunding Bond Fund, 1985, which fund is divided into two accounts, a Principal and Interest Account and a Reserve Account. So long as any Bonds and/or Parity Bonds are outstanding against the Bond Fund, the City obligates and binds itself to set aside and pay into the Bond Fund out of the Revenue of the Waterworks Utility certain fixed amounts without regard to any fixed proportion, namely:

(a) Into the Principal and Interest Account, by May 20, 1985, an amount which, together with ULID Assessments collected and other money on deposit therein, equals the interest to become due on June 1, 1985, and thereafter on or before the 20th day of each month, beginning with the month of June, 1985, an amount which, together with ULID Assessments collected and other money on deposit therein, equals (1) one-sixth of the Revenue of the Waterworks Utility required to pay the interest to become due and payable on the Bonds and Parity Bonds outstanding on the next interest payment date, and (2) one-twelfth of the Revenue of the Waterworks Utility required to pay principal of the Bonds and Parity Bonds on the next principal payment date; and

(b) Into the Reserve Account, an amount on deposit in the Reserve Account of the 1978 Bond Fund equal to the Reserve Requirement for the Bonds.

The City covenants and agrees that it will at all times maintain in the Reserve Account an amount equal to the Reserve

Requirement, except for withdrawals therefrom as authorized herein, until there is a sufficient amount in the Principal and Interest Account and Reserve Account to pay the principal of and interest on all outstanding bonds payable from the Bond Fund, at which time the money in the Reserve Account may be used to pay any such principal and interest so long as the money left remaining on deposit in the Reserve Account is no less than the Reserve Requirement of the remaining outstanding bonds payable from the Bond Fund.

In the event there shall be a deficiency in the Principal and Interest Account to meet maturing installments of either principal of or interest on any of the Bonds or any Future Parity Bonds, such deficiency shall be made up from the Reserve Account by the withdrawal of cash therefrom. Any deficiency created in the Reserve Account by reason of any such withdrawal will then be made up from the Revenue of the Waterworks Utility and from ULID Assessment payments which shall be first available after making necessary provisions for the required payments into the Principal and Interest Account.

All money in the Bond Fund may be kept in cash or deposited in institutions permitted by law in an amount in each institution not greater than the amount insured by any department or agency of the United States Government, or may be invested in Government Obligations or other legal investments permitted to the City maturing not later than the date when needed (for investments in the Principal and Interest Account) or the last

maturity of any outstanding bonds payable from the Bond Fund (for investments in the Reserve Account). In no event shall any money in the Bond Fund or any other money reasonably expected to be used to pay principal and/or interest on the Bonds be invested at a yield which would cause the Bonds to be arbitrage bonds within the meaning of Section 103(c) of the United States Internal Revenue Code of 1954, as amended, and applicable regulations thereunder. Income from investments in the Principal and Interest Account shall be deposited in that account. Income from investments in the Reserve Account shall be deposited in that account until the amount therein is equal to the Reserve Requirements of all bonds payable from the Bond Fund, and thereafter shall be deposited in the Principal and Interest Account.

It is declared that in creating the Bond Fund and in fixing the amounts to be paid into it as aforesaid, the City Council has had due regard for Operating and Maintenance Expense, and declares that the City Council is not setting aside into the Bond Fund a greater amount than in its judgment will be available over and above such Operating and Maintenance Expense.

If the City fails to set aside and pay into the Bond Fund the amounts set forth above, the owner of any of the outstanding bonds payable out of the Bond Fund may bring action against the City and compel the setting aside and payment.

Section 4. Irrevocable provision having been made by this ordinance for the refunding, payment and retirement of the 1978 Bonds, the Revenue of the Waterworks Utility and all ULID

Assessments are pledged for the payment of the Bonds and any Parity Bonds which may be issued hereafter. This pledge shall constitute a lien and charge upon such Revenue of the Waterworks Utility and ULID Assessments prior and superior to any other liens and charges whatsoever, subject only to Operating and Maintenance Expense.

Section 5. Immediately upon receipt of payment in full for the Bonds, any accrued interest received shall be deposited in the Principal and Interest Account, and the City shall use the principal proceeds of the Bonds to discharge the obligations of the City under the Ordinance No. 2403, as amended, authorizing the issuance of the 1978 Bonds by providing for the payment of the principal of and interest on the 1978 Bonds as the same shall become due until their maturity on June 1, 1997. The City shall discharge fully such obligations by the purchase of the Acquired Obligations, bearing such interest and maturing as to principal and interest in such amounts and such times so as to provide, together with the beginning cash balance, for such payments.

The Acquired Obligations are more particularly described and are set forth in Schedule A attached to Refunding Trust Agreement hereinafter referred to and attached hereto as Exhibit A, but are subject to substitution as set forth below.

The Acquired Obligations and a beginning cash balance of \$190,254.55 (which amount may be increased or decreased as

required when the exact purchase price of the Acquired Obligations is ascertained) shall be deposited irrevocably with the Refunding Trustee. The City reserves the right to substitute other Government Obligations for any of the Acquired Obligations set forth in such Schedule A and to use any savings created thereby for any lawful City purposes if, in the opinion of Roberts & Shefelman, the City's bond counsel, the Bonds will remain exempt from federal income taxation under Section 103(c) of the United States Internal Revenue Code of 1954, as amended, and applicable regulations thereunder, and if such substitution shall not impair the timely payment of the principal of or interest on the 1978 Bonds.

Section 6. The Refunding Trustee is authorized and directed to pay the principal of and interest on the 1978 Bonds as the same shall become due in accordance with the provisions of Ordinance No. 2403, as amended, and the 1978 Bonds from the Acquired Obligations and cash deposited with the Refunding Trustee pursuant to Section 5 of this ordinance. All Acquired Obligations and the cash deposited with the Refunding Trustee and any income therefrom shall be held, invested and applied in accordance with the provisions of Ordinance No. 2403, as amended, this ordinance, Chapter 39.53 RCW and other applicable laws of the State of Washington.

All necessary and proper fees, compensation and expenses of the Refunding Trustee for the Bonds and all other costs incidental to the setting up of the escrow to accomplish the

refunding of the 1978 Bonds and costs related to the issuance and delivery of the Bonds including bond printing, rating service fees, bond counsel's fees and other related expenses shall be paid out of the proceeds of the Bonds.

The Mayor and Directors of Administration and Finance of the City are directed to obtain from the Refunding Trustee a Refunding Trust Agreement setting forth the duties, obligations and responsibilities of the Refunding Trustee in connection with the payment, redemption and retirement of the 1978 Bonds as provided herein and stating that such provisions for the payment of the fees, compensation and expenses of such Refunding Trustee are satisfactory to it.

In order to carry out the purposes of the preceding section of this ordinance the Mayor and Director of Administration and Finance of the City are authorized and directed to execute a Refunding Trust Agreement substantially in the form attached hereto marked Exhibit A and by this reference made a part hereof.

Section 7. Immediately upon the delivery of the Bonds, the City Director of Administration and Finance is directed to transfer the amount on deposit in the reserve account of the 1978 Bond Fund to the Reserve Account for the Bonds and to transfer any remaining funds on deposit in the Principal and Interest Account of the 1978 Bond Fund to the Principal and Interest Account.

Section 8. The Bonds shall be printed on lithographed or good bond paper in a form consistent with the provisions of this

ordinance and state law, shall be signed by the Mayor and City Director of Administration and Finance, ex officio City Clerk, both of whose signatures shall be in facsimile, and a facsimile reproduction of the seal of the City shall be printed thereon.

Only such Bonds as shall bear thereon a Certificate of Authentication in the following form, manually executed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance:

CERTIFICATE OF AUTHENTICATION

This bond is one of the fully registered City of Kirkland, Washington, Water and Sewer Revenue Refunding Bonds, 1985, described in the Bond Ordinance.

WASHINGTON STATE FISCAL AGENCY
Bond Registrar

By _____
Authorized Signature

Such Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this ordinance.

In case either or both of the officers who shall have executed the Bonds shall cease to be such officer or officers of the City before the Bonds so signed shall have been authenticated or delivered by the Bond Registrar or issued by the City, such Bonds nevertheless may be authenticated, delivered and issued and upon such authentication, delivery and issue, shall be as binding upon the City as though those whose facsimile

signatures appear on the Bonds had continued to be such officers of the City. Any Bond also may be signed on behalf of the City by such persons as at the actual date of execution of such Bond shall be proper officers of the City authorized to execute Bonds although on the original date of such Bond such persons were not such officers of the City.

Section 9. The Bond Registrar shall keep, or cause to be kept, at its principal corporate trust office, sufficient books for the registration and transfer of the Bonds which shall at all times be open to inspection by the City.

The Bond Registrar shall be responsible for its representations contained in the Registrar's Certificate of Authentication on the Bonds. The Bond Registrar may become the owner of Bonds with the same rights it would have if it were not the Bond Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bond owners.

Section 10. The Bonds shall be negotiable instruments to the extent provided by RCW 62A.8-102 and 62A.8-105.

Section 11. The City covenants and agrees with the owner of each of the Bonds as follows:

(a) It will establish, maintain, revise as necessary and collect such rates and charges for water and sanitary sewage disposal service furnished which, together with ULID Assessments which will be collected in any such year and other revenue available therefor, will produce Revenue of the Waterworks Utility available for debt service each calendar

year, after payment of Operating and Maintenance Expense, at least equal to 1.25 times the Annual Debt Service in any year thereafter on all outstanding Bonds and Parity Bonds actually payable from the Revenue of the Waterworks Utility (the "Coverage Requirement").

(b) It will at all times maintain and keep the Waterworks Utility in good repair, working order and condition, and also will at all times operate such utility and the business in connection therewith in an efficient manner and at a reasonable cost.

(c) It will collect promptly all ULID Assessments. Such assessments may be used to pay the principal or interest on any bonds payable out of the Bond Fund without those assessments being particularly allocated to the payment of principal or interest on any particular series of Bonds or Parity Bonds.

(d) It will not sell, lease, mortgage or in any manner encumber or dispose of all the property of the Waterworks Utility unless provision is made for payment into the Bond Fund of a sum sufficient to pay the principal of and interest on all Bonds at any time outstanding, and that it will not sell, lease, mortgage, or in any manner encumber or dispose of any part of the property of the Waterworks Utility that is used, useful and material to the operation thereof, unless provision is made for replacement thereof, or for payment into the Bond Fund of the total amount of revenue received which shall not be less than an amount which shall bear the same ratio to the amount of outstanding bonds payable from the Bond Fund as the Revenue of the Waterworks Utility available for debt service for such outstanding bonds for the twelve months preceding such sale, lease, encumbrance or disposal from the portion of the Waterworks Utility sold, leased, encumbered or disposed of bears to the Revenue of the Waterworks Utility available for debt service for such bonds for the same period. Any such money so paid into the Bond Fund shall be used to retire outstanding bonds payable therefrom at the earliest possible date and until being so used may be invested to the same extent and in the same manner as provided for the investment of money in the Reserve Account in the Bond Fund.

(e) It will keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to the Waterworks Utility, and it will furnish the owner or owners of the Bonds or any subsequent owner or owners thereof, at the written request of such owner or owners, complete operating and income statements of the Waterworks Utility in reasonable detail covering any calendar year not more than 120 days after the close of such calendar year and it will grant any owner or owners of at least twenty-five percent of the outstanding Bonds the right at all reasonable times to inspect the entire Waterworks Utility and all records, accounts and data of the City relating thereto. Upon request of any owner of any of the Bonds, it also will furnish to such owner a copy of the most recently completed audit of the City's accounts by the State Auditor of Washington.

(f) It will not furnish any service of the Waterworks Utility to any customer whatsoever free of charge and will take prompt legal action to enforce collection of all delinquent accounts.

(g) It will at all times carry fire and such other forms of insurance on such of the buildings, equipment, facilities and properties of the City as under good practice are ordinarily carried on such buildings, equipment, facilities, and properties by utilities engaged in the operation of water and sewer systems to the full insurable value thereof, and also will carry adequate public liability insurance (and war risk insurance if available at reasonable rates) at all times. The premiums on such insurance policies are declared to be a normal part of Operating and Maintenance Expense.

(h) It will pay all Operating and Maintenance Expense and otherwise meet the obligations of the City as herein set forth.

(i) It will not take or permit to be taken on its behalf any action which would adversely affect the exemption from federal income taxation of the interest on the Bonds and will take or require to be taken such acts as may reasonably be within its ability and as may from time to time be required under applicable law to continue the exemption from federal income taxation of the interest on the Bonds. Without limiting the generality of the foregoing, and except to the extent the investment of any

Bond proceeds is limited to a yield required to comply with federal arbitrage regulations, the City will not invest or make other use of the proceeds of the Bonds or of its other money at any time during the term of the Bonds, which if such use had been reasonably expected at the date that the Bonds are issued, would have caused such Bonds to be arbitrage bonds within the meaning of Section 103(c) of the United States Internal Revenue Code of 1954, as amended, and applicable regulations thereunder.

It has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is a bond issuer whose arbitrage certifications may not be relied upon.

(j) It will use, pay out and distribute the Revenue of the Waterworks Utility, other than money deposited in bond redemption funds, in the following order of priority:

(1) To pay Operating and Maintenance Expense;

(2) To meet the required debt service payments on the Bonds and any Parity Bonds hereafter issued by making payments into the Principal and Interest Account;

(3) To make required payments into the Reserve Account; and

(4) To meet the required debt service on any water and sewer revenue bonds issued having a charge and lien on the Revenue of the Waterworks Utility junior to the Bonds; to redeem and retire any than outstanding water and sewer revenue bonds or to purchase any or all of those bonds in the open market as provided in this ordinance; to make necessary betterments and replacements of or repairs, additions or extensions to the Waterworks Utility; or for any other lawful purpose.

Section 12. The City further covenants with the owner of each of the Bonds for as long as any of the same is outstanding that it will not create any special fund or funds for the payment of the principal of and interest on any other revenue bonds

which will have any priority over or which will rank on a parity with the payments required by this ordinance to be made out of the Revenue of the Waterworks Utility and ULID Assessments, nor will it issue Parity Bonds, except that it reserves the right for

First, the purpose of acquiring, constructing and installing additions, betterments and improvements to and extensions of, acquiring necessary equipment for, or making necessary replacements of or repairs or capital improvements to the Waterworks Utility pursuant to a plan or plans of additions and betterments thereto hereafter adopted, or

Second, the purpose of refunding by exchange or purchasing and retiring or advance refunding by call and payment at or prior to their maturity any part or all of the outstanding Bonds or Parity Bonds,

to issue additional and/or refunding revenue bonds therefor, and to make payments into the Bond Fund from the Revenue of the Waterworks Utility and ULID Assessments sufficient to pay the principal of and interest on such Parity Bonds and to maintain a reserve therefor as hereinafter required, which such payments may rank equally with the payments out of the Revenue of the Waterworks Utility and ULID Assessments required to be made into the Bond Fund by this ordinance, if the following conditions and requirements are met and complied with at the time of the issuance of such Parity Bonds:

(a) At the time of issuance of such Parity Bonds, there shall not be a deficiency in either the Principal and Interest Account or the Reserve Account;

(b) The ordinance providing for the issuance of such Parity Bonds shall provide that all assessments and interest thereon which may be levied in any ULID created for the purpose of paying in whole or in part the principal of and interest on such Parity Bonds shall be paid directly into the Bond Fund;

(c) Each ordinance providing for the issuance of such Parity Bonds shall provide for the payment of the principal thereof and interest thereon out of the Bond Fund.

(d) The ordinance authorizing any Parity Bonds shall require that the Reserve Account be increased within a period of five years after the date of issuance of the Parity Bonds to an amount equal to the Average Annual Debt Service on all bonds payable from the Bond Fund, including the Parity Bonds proposed to be issued.

(e) At the time of the issuance of such Parity Bonds, the City shall have on file a certificate from an independent licensed professional engineer experienced in the design, construction and operation of municipal utilities, showing that in his/her/its professional opinion, the annual Revenue of the Waterworks Utility available for debt service on the Bonds, Parity Bonds then outstanding and the Parity Bonds proposed to be issued for each year, shall be at least equal to the Coverage Requirement.

In determining whether the City is able to comply with the terms of the parity conditions, the following adjustments may be made to the historical Revenue of the Waterworks Utility for any twelve consecutive months out of the immediately preceding 24-month period:

(i) Any rate change that has taken place or been adopted may be reflected;

(ii) Revenue may be added from customers actually added to the Waterworks Utility subsequent to the twelve-month period;

(iii) Revenue may be added from customers to be served by the improvements being constructed out of the proceeds of the Parity Bonds to be issued; and

(iv) Revenue may be added from customers reasonably anticipated to be added to the Waterworks Utility where service is available, if the annual income thus determined shall only be increased annually for three calendar years following the

issuance of the the Parity Bonds, and if the aggregate of such estimate of additional customers may does exceed the actual aggregate of new customers during the three calendar years immediately preceding the issuance of such Parity Bonds.

Nothing contained in the provisions for Parity Bonds shall prevent the City from issuing revenue bonds or other obligations having a junior lien on the Revenue of the Waterworks Utility or from pledging the payment of assessments in any ULID into a bond note, or warrant redemption fund or account created to pay and secure the payment of the principal of and interest on such junior lien obligations as long as such assessments are levied to pay part or all of the cost of improvements being constructed out of the proceeds of the sale of such junior lien obligations. Neither shall anything contained in this ordinance prevent the City from issuing revenue bonds to refund maturing revenue obligations of the City for the payment of which money is not otherwise available.

Section 13. In the event the City shall issue advance refunding bonds pursuant to the laws of the State of Washington, or have money available from any other lawful source, to pay the principal of and interest on the Bonds or such portion thereof included in the refunding plan as the same become due and payable and to refund such then outstanding Bonds and to pay the costs of refunding, and shall have set aside irrevocably in a special fund for and pledged to such payment and refunding, money and/or Government Obligations or other legal investments sufficient in amount, together with known earned income from the

investments thereof, to make such payments and to accomplish the refunding as scheduled (hereinafter called the "trust account"), and shall make irrevocable provisions for redemption of such Bonds, then in that case all right and interest of the owners of the Bonds to be so retired or refunded (hereinafter collectively called the "defeased Bonds") in the covenants of this ordinance, in the Revenue of the Waterworks Utility, ULID Assessments and funds and accounts obligated to the payment of such Bonds, other than the right to receive the funds so set aside and pledged, thereupon shall cease and become void, except such owners shall have the right to receive payment of the principal of and interest on the defeased Bonds from the trust account and, in the event the funds in the trust account are not available for such payment, shall have the residual right to receive payment of the principal of and interest on the defeased Bonds from the Revenue of the Waterworks Utility and ULID Assessments without any priority of lien or charge against that revenue or assessments or covenants with respect thereto except to be paid therefrom. After the establishing and full funding of such trust account, the City then may apply any money in any other fund or account established for the payment or redemption of the defeased Bonds to any lawful purposes as it shall determine, subject only to the rights of the owners of any other bonds then outstanding.

In the event that the refunding plan provides that the Bonds being refunded or the refunding bonds to be issued be secured by cash and/or Government Obligations or other legal

investments pending the prior redemption of those Bonds being refunded and if such refunding plan also provides that certain cash and/or Government Obligations or other legal investments are pledged irrevocably for the prior redemption of those Bonds included in the refunding plan, then only the debt service on the Bonds which are not defeased Bonds and the refunding bonds, the payment of which is not so secured by the refunding plan, shall be included in the computation of coverage for issuance of Parity Bonds and the annual computation of coverage for determining compliance with the rate covenants.

Section 14. Boettcher & Company of Seattle, Washington, has presented a Bond Purchase Agreement (the "Purchase Contract") to the City whereunder Boettcher & Company has offered to purchase the Bonds under the terms and conditions provided in the Purchase Contract and to purchase on behalf of the City the Acquired Obligations at the prices specified in Schedule A of Exhibit A (subject to substitution), which written Purchase Contract is on file with the City Director of Administration and Finance, ex officio City Clerk, and is incorporated herein by this reference. The City Council finds that entering into the Purchase Contract is in the City's best interest and therefore accepts the offer contained in the Purchase Contract and authorizes the execution of the Purchase Contract by City officials.

The Bonds will be printed at City expense and will be delivered to the purchaser in accordance with the Purchase

Contract offer with the approving legal opinion of Roberts & Shefelman, municipal bond counsel of Seattle, Washington, relative to the issuance of the bonds, printed on each bond. Bond counsel shall not be required to review or express any opinion concerning the completeness or accuracy of any official statement, offering circular or other sales material issued or used in connection with the Bonds and bond counsel's opinion shall so state.

The proper City officials are authorized and directed to do everything necessary for the prompt delivery of the Bonds to the purchaser and for the proper application and use of the proceeds of the sale thereof.


Section 15. This ordinance shall take effect from and after its passage and five (5) days after its publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Kirkland, Washington, at a regular open public meeting thereof, this 6th day of May, 1985.

CITY OF KIRKLAND, WASHINGTON


MAYOR

ATTEST:


Director of Administration and
Finance ex officio City Clerk

FORM APPROVED:

By *Paul Howard*
Acting City Attorney

1618k

I hereby certify under penalty of perjury that the foregoing ordinance was posted on the 8th day of May, 1985 in accordance with the provisions of RCW 35A.12.160 and City of Kirkland Ordinance No. 2600.

Janice Perry
Deputy City Clerk

EXHIBIT AREFUNDING TRUST AGREEMENT

THIS AGREEMENT made and entered into as of the ____ day of May, 1985, by and between the CITY OF KIRKLAND, WASHINGTON (the "City"), and SEATTLE-FIRST NATIONAL BANK, Seattle, Washington (the "Refunding Trustee");

W I T N E S S E T H:

SECTION 1. Recitals. The City has outstanding \$1,440,000 principal amount of Water and Sewer Revenue Refunding Bonds, 1978 (the "1978 Bonds"), maturing on June 1 of each of the years 1985 through 1997, bearing various interest rates from 6.25% to 6.90%, and, pursuant to Ordinance No. ____ (the "Refunding Bond Ordinance") the City has determined to pay the principal of and interest on the 1978 Bonds as the same shall become due until their maturity on June 1, 1997, out of the proceeds of the sale of its "Water and Sewer Revenue Refunding Bonds, 1985" (the "Refunding Bonds"), and other City money legally available therefor.

SECTION 2. Provisions for Refunding the 1978 Bonds. To accomplish the refunding of all of the 1978 Bonds as aforesaid, the City, simultaneously with the delivery of the Refunding Bonds issued pursuant to the Refunding Bond Ordinance, agrees to deposit irrevocably with the Refunding Trustee in trust for the security and benefit of the holders and owners of the 1978 Bonds and the Refunding Bonds, the sum of \$190,254.55 in cash and certain "Acquired Obligations" with amounts, interest rates and

maturities as more particularly set forth in Schedule A attached to this Agreement and by this reference incorporated herein, which securities hereinafter are referred to as "Acquired Obligations." Such cash and Acquired Obligations, with the investment income therefrom, will be sufficient to provide the funds required to pay the principal of and interest on the 1978 Bonds as the same shall become due until their maturity on June 1, 1997.

The City reserves the right to substitute other direct United States obligations for any of the Acquired Obligations if, in the opinion of Roberts & Shefelman, the Refunding Bonds will remain exempt from Federal income taxation under Section 103(c) of the Internal Revenue Code of 1954, as amended, and applicable regulations thereunder, and if such substitution shall not impair the timely payment of or interest on the 1977 Bonds.

SECTION 3. Provisions Applicable to Refunding. On or before the delivery of the Refunding Bonds, the City agrees that it will cause to be delivered to the Refunding Trustee a statement setting forth the amount of interest and principal to be paid on each semiannual interest payment date on the outstanding 1978 Bonds.

SECTION 4. Disbursements by Refunding Trustee. The Refunding Trustee shall present for payment on the due date thereof the Acquired Obligations so deposited and shall apply

the proceeds derived therefrom in accordance with the provisions of this section.

Money shall be transferred by the Refunding Trustee to the City Director of Administration and Finance, or to either fiscal agency of the State of Washington in Seattle, Washington, or New York, New York (the "Fiscal Agent"), in amounts sufficient to pay the interest on and principal of the 1978 Bonds coming due and payable on or before each payment date.

SECTION 5. Restrictions on Reinvestment of Funds; Custody and Safekeeping of Acquired Obligations. All money deposited with the Refunding Trustee or received by the Refunding Trustee as maturing principal or interest on Acquired Obligations prior to the time required to make the payments hereinbefore set forth shall be reinvested in United States Treasury Certificates of Indebtedness, State and Local Government Series, bearing interest at a rate of 0%. Subscriptions for the purchase of such obligations shall be filed with the Federal Reserve Bank at least 20 days (but not more than 60 days) prior to the actual date of purchase, or at such time as may be required by the then applicable rules and regulations relating to the purchase of such obligations.

All income derived from the Acquired Obligations and any money deposited with the Refunding Trustee pursuant to Section 2 hereof in the hands of the Refunding Trustee (which money is not required to make the payments hereinbefore required to be made) shall be paid to the City Director of Administration and Finance

or Fiscal Agent for the credit of the Water and Sewer Revenue Refunding Bond Fund, 1985, of the City (the "Bond Fund") as and when realized and collected for use and application as other money deposited in such Bond Fund.

For as long as any of the 1978 Bonds is outstanding, on or before the 10th day of each month, commencing with the month of June, 1985, the Refunding Trustee shall render a statement as of the last day of the preceding month to City, which statement shall set forth the Acquired Obligations which have matured and the amounts received by the Refunding Trustee by reason of such maturity, the investment income received from such Acquired Obligations, the amounts paid to the City or Fiscal Agent for credit to the Bond Fund and the dates of such payment for the payment of the interest on and principal of the outstanding 1977 Bonds, and any other transactions of the Refunding Trustee pertaining to its duties and obligations as set forth herein.

All Acquired Obligations, money and investment income deposited with or received by the Refunding Trustee pursuant to this Agreement shall be subject to the trust created by this Agreement and the Refunding Trustee shall be liable for the preservation and safekeeping thereof.

SECTION 6. Substituted Securities. Notwithstanding the foregoing or any other provision of this Agreement, at the request of the City and upon compliance with the conditions hereinafter stated, the Refunding Trustee shall have the power to and shall, in simultaneous transactions, sell, transfer,

otherwise dispose of or request the redemption of any or all of the Acquired Obligations held hereunder and to substitute therefor direct obligations of the United States of America, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, subject to the conditions that such money or securities held by the Refunding Trustee shall be sufficient to pay the principal of and interest on the outstanding 1978 Bonds. The City covenants and agrees that it will not request the Refunding Trustee to exercise any of the powers described in the preceding sentence in any manner which will cause the Refunding Bonds to be arbitrage bonds within the meaning of Section 103(c) of the Internal Revenue Code of 1954, as amended, and the regulations thereunder in effect on the date of such request and applicable to obligations issued on the issue date of the Refunding Bonds. The Refunding Trustee shall purchase such substituted securities with the proceeds derived from the maturity, sale, transfer, disposition or redemption of the Acquired Obligations held hereunder or from other money available. The transactions may be effected only if there shall have been obtained at the expense of the City: (1) an independent verification by a nationally recognized independent certified public accounting firm acceptable to the Refunding Trustee concerning the adequacy of such substituted securities with respect to the principal of and the interest thereon and any other money or securities held

for such purpose to pay the principal and interest on the outstanding 1978 Bonds; and (2) an opinion from Roberts & Shefelman, bond counsel to the City, to the City to the effect that the disposition and substitution or purchase of such securities will not, under the statutes, rules and regulations then in force and applicable to the Refunding Bonds, cause the interest on the Refunding Bonds not to be exempt from Federal income taxation and that such disposition and substitution or purchase is not inconsistent with the statutes and regulations applicable to the Refunding Bonds. Any surplus money resulting from the sale, transfer, other disposition or redemption of the Acquired Obligations held hereunder and the substitutions therefor of direct obligations of the United States of America, shall be released from the trust estate and shall be transferred to the City.

SECTION 7. Duties and Obligations of Refunding Trustee.

The duties and obligations of the Refunding Trustee shall be as prescribed by the provisions of this Agreement, and the Refunding Trustee shall not be liable except for the performance of its duties and obligations as specifically set forth herein and to act in good faith in the performance thereof and no implied duties or obligations shall be incurred by such Refunding Trustee other than those specified herein.

The Refunding Trustee may consult with counsel of its choice (except as provided below) and the opinion of such counsel shall be full and complete authorization and protection in

respect of any action taken or not taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel. For any questions relating to the tax exempt status of the 1978 Bonds or the Refunding Bonds, the Refunding Trustee must consult with Roberts & Shefelman, bond counsel to the City.

Provisions for the fees, compensation and expenses of the Refunding Trustee satisfactory to it have been made.

CITY OF KIRKLAND, WASHINGTON

By *Louis Cooper*
Mayor

ATTEST:

Director of Administration and
Finance, ex officio City Clerk

SEATTLE-FIRST NATIONAL BANK

By _____
Trust Officer

1635k

SCHEDULE A

ACQUIRED OBLIGATIONS

<u>TYPE*</u>	<u>PAR AMOUNT</u>	<u>INTEREST RATE</u>	<u>MATURITY</u>
LN	\$119,200.00	.000000%	6/1/1986
LN	133,200.00	9.712600	6/1/1987
LN	165,400.00	10.670600	6/1/1988
LN	170,600.00	10.987000	6/1/1989
LN	186,800.00	11.183500	6/1/1990
LN	199,600.00	11.353500	6/1/1991
LN	103,700.00	11.503500	6/1/1992
LN	3,600.00	11.530000	6/1/1993
LN	3,700.00	11.550000	6/1/1994
LB	8,800.00	11.560000	6/1/1995
LB	9,200.00	11.580000	6/1/1996
LB	9,500.00	11.603500	6/1/1997

*LN - SLGS Notes

LB - SLGS Bonds

